

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN SHERMAN RUSSELL, III,

Defendant-Appellant.

UNPUBLISHED

April 24, 2008

No. 276456

Montcalm Circuit Court

LC No. 06-008197-FH

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant was convicted by a jury of owning or harboring a dangerous animal causing serious injury, MCL 287.323(2), and was sentenced to two years' probation with seven months in jail. Defendant appeals as of right. We affirm.

Defendant argues the prosecutor did not present sufficient evidence to prove beyond a reasonable doubt that he owned or harbored the four dogs that attacked the victim. We disagree.

In a criminal case, "[d]ue process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to conclude that the defendant is guilty beyond a reasonable doubt." *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "The standard is deferential and requires that this Court 'draw all reasonable inferences and make credibility choices in support of the jury verdict.'" *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006), quoting *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Thus, "all conflicts in the evidence must be resolved in favor of the prosecution." *Martin, supra* at 340, citing *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant stipulated that the four dogs caused serious injuries to the victim, MCL 287.323(2), and that the four dogs were dangerous animals. MCL 287.321(a). Therefore, the only issue on appeal is whether the evidence presented was sufficient to support a finding that defendant owned or harbored the dogs that attacked the victim.

Deputy Clayton Thomas asked defendant if he “had four brown and black dogs” and defendant said, “yes, but they were not aggressive.” Officer Kevin Wheeler also testified that Deputy Thomas asked defendant “if he had owned any dogs” and defendant said, “yes, but they weren’t aggressive.” Viewed in the light most favorable to the prosecution, this evidence was sufficient to support a finding that defendant owned the dogs. Even assuming that the evidence was insufficient to support this finding as defendant argues, the evidence was sufficient to support a finding that defendant harbored the dogs.

Deputy Thomas testified that defendant told him that he and his girlfriend lived in the trailer that the dogs came out from behind when Deputy Thomas and Officer Wheeler arrived at the residence. In addition, Deputy Thomas testified that defendant told him that the dogs’ vaccination records were inside his trailer, but that defendant stated his trailer was “either too messy or he would not be able to locate them.” Officer Wheeler testified defendant knew the names of the four dogs, how old they were, the sex of the dogs, and that the four dogs had received their “rabies, parvo, and another shot.” When Officer Wheeler informed defendant that he would have to take the dogs and that it would cost him \$400 to quarantine the dogs for ten days, defendant told him to “take the dogs” because he could not afford the cost. Officer Wheeler had defendant sign a statement of surrender giving him permission to take the dogs to be destroyed. Viewed in a light most favorable to the prosecution, this evidence was sufficient to support a finding that defendant harbored the dogs.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey